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ITW

769-333 Div. (ITW 8673.78)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants: McMahon et al

Art Unit: 3721

Serial No.: 10/822,369

Examiner: John Sipos

Filed: April 12, 2004

For: **METHODS OF MAKING SLIDER-ZIPPERED RECLOSABLE  
PACKAGES ON HORIZONTAL FORM-FILL-SEAL MACHINES**

**TRANSMITTAL OF APPEAL BRIEF**

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S I R:

Enclosed is an original brief to the Board of Patent Appeals and Interferences and three photocopies thereof. This Appeal Brief is being filed pursuant to the Notice of Appeal dated September 28, 2006, with an apparent Office filing date of October 2, 2006. A check for the Rule 17 fee for filing an appeal brief is enclosed herewith. Any other fees may be charged to Deposit Account 50-1145, Order No. 769-333 Div.

Respectfully submitted,

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Before the Board of Patent Appeals and Interferences

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**METHODS OF MAKING SLIDER-ZIPPERED RECLOSABLE  
PACKAGES ON HORIZONTAL FORM-FILL-SEAL MACHINES**

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Ex parte: Michael J. McMahon  
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Steven Ausnit  
Donald L. Crevier  
Joel Johnson  
David J. Matthews

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**BRIEF FOR THE APPELLANTS**

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ITW Ref.: 8673.78  
PH Ref.: 769-333 Div.

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I. REAL PARTY IN INTEREST

The real party in interest is assignee Illinois Tool Works Inc.

II. RELATED APPEALS AND INTERFERENCES

The present application claims the priority of U.S. Patent No. 6,138,439, from which many applications likewise claim priority. These applications include application serial no. 10/216,881, for which PAIR indicates that an Initial Interference Memorandum has been prepared; application serial no. 10/822,369 for which a Notice of Appeal has been filed; and application serial nos. 10/217,048, 10/301,308 and 10/074,132, which are presently under appeal. To the best of Appellants' knowledge, there are no relevant documents for the "Related Proceedings Appendix".

III. STATUS OF CLAIMS

Claims 34-46 are rejected and are being appealed herein.

IV. STATUS OF AMENDMENTS

No response was filed to the final Office Action of June 28, 2006. The Notice of Appeal was filed September 28, 2006 with an apparent Office filing date of October 2, 2006.

## V. SUMMARY OF CLAIMED SUBJECT MATTER

The claimed subject matter is a method of making reclosable packages, said method comprising the steps of: feeding a supply of package film in a package forming direction (Fig. 18, elements 82, 84; page 10, line 4); folding said package film about a bottom fold to form opposing package walls (Fig. 18, element 86, 116, 118; page 10, lines 5-7), said opposing package walls advancing in said package forming direction (Fig. 18, element 98; page 10, lines 4 and 5); feeding a supply of interlocked reclosable zipper between said opposing package walls (Fig. 18, element 36; page 11, first full paragraph and page 12, last full paragraph), said interlocked reclosable zipper including two interlocking profiles with flanges extending therefrom (Fig. 19, elements 40, 42, also see sentence bridging pages 5 and 6) and mounted sliders (Fig. 19, element 44; also see page 6, lines 5 and 6), each of said mounted sliders being adapted to open and close said reclosable zipper as said slider is moved along said reclosable zipper in opening and closing directions, respectively (page 6, lines 6-9); sealing a first portion of said flanges to said opposing package walls adjacent to said bottom fold with a second portion of said flanges free of sealing to said opposing package walls (Fig. 19; joining of elements 40 and 42 to element 82; page 12, lines 16-18); and cross-sealing said folded film at package-width intervals to form a chain of packages (Fig. 18, element 94; page 10, lines 14-15), each of said packages having a reclosable zipper and a slider.

## VI. GROUND OF REJECTION TO BE REVIEWED UPON APPEAL

Are Claims 34-46 obvious under 35 U.S.C. §103(a) in view of the Herber reference (U.S. Patent No. 5,519,982) or the Gilbert reference (United Kingdom Patent No. 2,085,519) or, alternately, the Gilbert reference over the Herber reference.

Additionally, the outstanding double patenting rejection will be overcome with terminal disclaimer, if necessary, after the application is otherwise in condition for allowance.

## VII. ARGUMENTS

The Office Action rejected Claims 34-46 under 35 U.S.C. §103(a) as being obvious over the Herber reference in view of the Gilbert reference (United Kingdom Patent Application No. 2,085,519) or, alternatively, the Gilbert reference in view of the Herber reference.

The presently pending claims relate to a method for making reclosable packages wherein a slider-operated zipper is sealed adjacent to the bottom fold in a folded sheet of web.

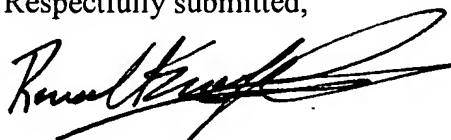
The Herber reference discloses a zipper structure wherein the entire base of the profile is sealed to the bag walls. This is quite different from the present pending claim language which recites sealing a first portion of the flanges to the opposing bag walls and a second portion of the flanges being free of sealing to the opposing bag walls. This is required to make the claimed slider functional. With a structure such as is disclosed in the Herber reference, the sliders would not be functional and the zipper profile would not be operational with the Gilbert reference.

There is no teaching in either cited reference or in the prior art which would lead one of average skill in the art to combine these two references.

It is therefore respectfully submitted that the rejection (including the alternative rejection) under 35 U.S.C. §103(a) is overcome.

The Board is respectfully requested to find all of the presently pending claims to be allowable.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ronald E. Brown", with a stylized, sweeping flourish extending from the end of the name.

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## VIII. CLAIMS APPENDIX

Claims 1-33 – (canceled)

34. A method of making reclosable packages, said method comprising the steps of:
- feeding a supply of package film in a package forming direction;
  - folding said package film about a bottom fold to form opposing package walls, said opposing package walls advancing in said package forming direction;
  - feeding a supply of interlocked reclosable zipper between said opposing package walls, said interlocked reclosable zipper including two interlocking profiles with flanges extending therefrom and mounted sliders, each of said mounted sliders being adapted to open and close said reclosable zipper as said slider is moved along said reclosable zipper in opening and closing directions, respectively;
  - sealing a first portion of said flanges to said opposing package walls adjacent to said bottom fold with a second portion of said flanges free of sealing to said opposing package walls;
  - and
  - cross-sealing said folded film at package-width intervals to form a chain of packages, each of said packages having a reclosable zipper and a slider.
35. The method of Claim 34 further including the step of forming at least one line of weakness in said package film.

36. The method of Claim 35 wherein said at least one line of weakness is formed between where said zipper is sealed to said opposing package walls.

37. The method of Claim 35 wherein said at least one line of weakness is formed proximate to said bottom fold.

38. The method of Claim 35 wherein said step of forming said at least one line of weakness is substantially simultaneous with said step of folding said package film.

39. The method of Claim 34 further including the step of forming one line of weakness on each of said opposing package walls between said bottom fold and where said zipper is sealed to respective said opposing package walls.

40. The method of Claim 34 wherein said sliders are inserted on to said reclosable zipper prior to said reclosable zipper being fed between said opposing package walls.

41. The method of Claim 34 further including the step of filling said reclosable package with product at an end opposite to said bottom fold.

42. The method of Claim 41 further including the step of sealing said reclosable package at said opposite end after said step of filling.



43. The method of Claim 34 wherein said reclosable zipper includes interlocking profiles and wherein said method further includes the step of providing a peel seal between said interlocking profiles of said interlocked reclosable zipper.

44. The method of Claim 34 further including the step of cutting each of said packages from said chain of packages.

45. The method of Claim 34 wherein ends of said reclosable zipper of each package are cross-sealed.

46. The method of Claim 34 wherein said reclosable zipper supply is stomped at package-width intervals.

IX. EVIDENCE APPENDIX

None

X. RELATED PROCEEDINGS APPENDIX

None